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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

STATE OF OHIO, EX REL.
DEPARTMENT OF MENTAL HEALTH
& MENTAL RETARDATION, SECTION
OF REIMBURSEMENT SERVICES

Appellee

-vs-

LEO J. TALIKKA, GUARDIAN
OF THE ESTATE OF WILLIAM THOMAS
BALDAUF aka WILLIAM T. BALDAUF

Appellant

-vs-

CITIZENS SAVINGS & LOAN COMPANY

Appellee

ON APPEAL FROM

THE OHIO COURT OF APPEALS
FOR THE ELEVENTH DISTRICT

JURISDICTIONAL STATEMENT

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73 pp

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Appellant

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Appellee

ON APPEAL FROM
THE OHIO COURT OF APPEALS
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JURISDICTIONAL STATEMENT

QUESTION PRESENTED

Whether Section 5121.12 Rev. Code Ohio violates the Fourteenth Amendment to

the Constitution of the United States when it exempts from the obligation to reimburse the State for care and treatment at State Hospitals for the mentally ill, convicted felons, misdemeanants, and persons under indictment, but imposes an obligation of reimbursement on insanity acquitees judicially committed.

PARTIES TO THE PROCEEDINGS IN THE OHIO COURT OF APPEALS ELEVENTH DISTRICT

1. State of Ohio, ex rel.
   Department of Mental Health & Mental Retardation, Section of Reimbursement Services

2. Leo J. Talikka, Guardian
   of the Estate of William Thomas Baldauf aka William T. Baldauf

3. Citizens Savings & Loan Company

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OPINIONS BELOW

The opinion of the Ohio Court of Appeals for the Eleventh Appellate District is not reported, but is reprinted in the Appendix at page A-5.

The opinion of the Ohio Court of Common Pleas for Lake County is not reported. The opinion is reprinted in the Appendix at page A-18.

BASIS OF JURISDICTION

This is an appeal from the judgment of the Ohio Court of Appeals, Eleventh District, affirming the judgment of the Court of Common Pleas, Lake County, Ohio. The judgment of the Court of Appeals was entered on the 27th day of December, 1983. See Appendix A-4. A prior appeal was dismissed by the Ohio Court of Appeals on November 29, 1982 in Case No. 9-906 for lack of a final, appealable order. See

Appendix A-33 for the Judgment Entry and Opinion from the Court of Appeals; and Appendix A-40 and A-42 for the judgments of the Trial Court issued pursuant to the Ohio Court of Appeals' Judgment of November 29, 1982.

Appellants properly sought review of the Court of Appeals judgment of the 27th day of December, 1983 in the Supreme Court of Ohio. On the 18th day of April, 1984, the Supreme Court overruled Appellant's Motion to certify the record and sua sponte dismissed the appeal. See Appendix A-34 and A-35.

A notice of appeal to this Court was duly filed in the Ohio Court of Appeals, Eleventh District on May 29, 1984. See Appendix A-44.

The judgment of the Ohio Court of Appeals upheld the constitutionality of a Statute of the State of Ohio against a claim that the Statute as applied to

Appellant violated the Fourteenth Amendment to the United State Constitution. The jurisdiction is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISIONS, STATUTES

Fourteenth Amendment, United States Constitution, Section One:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U. S. CONST. AMEND XII

§5121.12 Rev. Code Ohio

Support and maintenance of patients

> The support and maintenance of patients confined in state hospitals for the mentally ill or in state institutions for the mentally retarded, excepting

> those transferred thereto from correctional, penal, and reformatory institutions, and persons under indictment or conviction for crime, shall be collected and paid in accordance with this chapter. PAGE'S OHIO REVISED CODE, ANNOTATED TITLE 51, PAGE 162

STATEMENT OF THE CASE

On or about July 9, 1976, William Thomas Baldauf aka William T. Baldauf, was committed for an unspecified period to the Lima State Hospital pursuant to Judgment rendered by the Court of Common Pleas, General Division, Lake County, Ohio in Case No: 76-CR-078 entitled State of Ohio vs William Thomas Baldauf, wherein William Baldauf was found not guilty by reason of insanity to an indictment of aggravated murder. Appellant Leo J. Talikka is the duly appointed Guardian of the Estate of William Thomas Baldauf, Incompetent, having been so appointed by the Court of Common Pleas, Probate Division, Lake County, Ohio, in Case No: 13-314.

Plaintiff-Appellee, The State of Ohio, Department of Mental Health and Mental Retardation, Section of Reimbursement Services [hereinafter "State"] commenced the within action for judgment and attachment against Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf [hereinafter "Talikka"], in the Court of Common Pleas, General Division, Lake County, Ohio on or about the 20th day of May, 1980. The State demanded a Judgment against Talikka in the sum of Fifty Nine Thousand, Five Hundred Forty-Four Dollars and 80/00 ($59,544.80), as and for debts arising from the cost of supporting William Baldauf in the Lima State Hospital.

On or about June 30, 1981, the State moved the Trial Court for Summary Judgment arguing that the corpus of the estate was required by law to be applied toward the costs incurred by the State for the care

of William T. Baldauf in a State institution for the mentally ill.

Talikka opposed the Motion setting forth that Section 5121.12 Rev. Code Ohio was violative of the equal protection clauses of the United States of America and the State of Ohio Constitution in that the classifications created under the said statute were arbitrary and based on no real distinction.

On or about the 25th day of February, 1982, the Court of Common Pleas, held that Section 5121.12 Rev. Code Ohio was not violative of the due process and equal protection clauses of either the Constitution of the United States of America or the State of Ohio, and found that a rational distinction exists between those committed to institutions for the mentally ill who were under the custody and supervision of the State's

correctional system, and insanity acquitees committed judicially.

Talikka appealed to the Ohio Court of Appeals, who dismissed the appeal for lack of a final appealable order.

Pursuant thereto a Nunc Pro Tunc entry of the Trial Court dismissed the Complaint against Continental Federal Savings and Loan Association and ordered the Opinion and Order of February 25, 1982, remain in full force and effect. On the 7th day of February 1983, the Trial Court vacated the Nunc Pro Tunc nature of the Judgment Entry and ordered that the body of the Judgment Entry dismissing "Continental" remain unaffected by the correction of the caption.

Talikka again appealed to the Ohio Court of Appeals.

The Ohio Court of Appeals upheld the constitutionality of the Statute finding that the legislature could logically

conclude that those who have been convicted of a crime or who stand charged with a crime should be kept a State expense, while Baldauf's committment is of the same nature and substance as a civil proceeding.

HOW THE FEDERAL QUESTIONS ARE PRESENTED

The questions presented for review were first raised by the Appellants in their reply in opposition to the Motion for Summary Judgment. The Appellant argued that the classifications created under Sec. 5121.12 Rev. Code Ohio were violative of the guarantees of equal protection secured by the Fourteenth Amendment to the Constitution of the United States of America.

Appellant argued that the classification based on indictment and conviction was arbitrary, capricious and without reasonable basis, and that the

distinction placed an undue burden on the insanity acquitee.

The Trial Court upheld the classification finding that a rational distinction exists between insanity acquitees whose commitment to benevolent institutions is based on an adjudication of insanity, and convicted felons and misdemeanants serving penal sentences who are transferred to hospitals during their incarceration.

On appeal the Appellant again presented to the Court his contention that the classifications created under Sec. 5121.12 Rev. Code Ohio were violative of equal protection.

The Court of Appeals found a rational basis for distinguishing between persons in Baldauf's position and those exempt from payment, holding that his was a civil commitment, whereas those who are exempt have been convicted of crime or stand

charged with a crime upon release from a state mental facility.

SUBSTANTIAL CONSTITUTIONAL QUESTIONS ARE PRESENTED

Successfully invoking the not guilty by reason of insanity defense carries a high price. Rarely is it a ticket to freedom.

William Thomas Baldauf was judicially committed to Lima State Hospital for an unspecified period after having been found not guilty of aggravated murder by reason of insanity.

In Ohio, part of the high price paid is the right of the State to seek reimbursement for the costs of the insanity acquitee's judicially imposed confinement at a State Hospital for the mentally ill. Sec. 5121.12 Rev. Code Ohio. On the 20th day of May 1980, the State of Ohio commenced a collection

action against Leo J. Talikka, Guardian of the Estate of Mr. Baldauf seeking recovery in the sum of Fifty Nine Thousand, Five Hundred Forty-Four and 08/100 ($59,544.08) for the period of Baldauf's confinement from July 14, 1976 through January 1, 1980 inclusive.

Sec. 5121.12 Rev. Code Ohio segregates mentally ill persons receiving treatment while confined in State hospitals into two (2) classes; to wit:

The Protected Class	The Non-Protected Class
No Right by the State to seek Reimbursement	Right of Reimbursement by the State
a. Persons under indictment	a. Voluntary committees, not under indictment or conviction
b. Convicted felons & misdemeanants not serving penal sentences	b. Judicially committed persons, not under indictment or conviction
c. Convicted felons & misdemeanants serving penal sentences	c. Persons found not guilty of a charged crime by reason of

insanity, who are committed judicially after hearing

In order to withstand the constitutional test of equal protection, the statutory distinctions between the two (2) classes must bear a rational relationship to the legislative purpose. Schweiker vs Wilson, 450 US 221, 67 L. Ed 2d 2186, 101 S.Ct. 1074.

A rational relationship between the presumed legislative purpose of preservation of public funds through a requirement that those able to pay should pay and the statutory classifications does not exist.

Convicted felons and misdemeanants not serving penal sentences are exempt from Sec. 5121.12 Rev. Code Ohio. As part of the general populace they can seek employment, accumulate assets, and incur debt. The language of the Statute does

not exempt this group only if their commitment is involuntary and judicially imposed. Arguably they could admit themselves and be exempt from payment.

Convicted felons and misdemeanants serving penal sentences are also exempt from payment, as are innocent persons under indictment.

However, William T. Baldauf, found to be so insane as to receive a verdict of not guilty by reason of insanity and whose insanity has continued from 1976 to the present, has had the State demand that he pay the sum of Fifty Nine Thousand, Five Hundred Forty-Four and 08/100 ($59,544.08) for his judicially imposed confinement.

Convicted rapists, con men and drug dealers, whether serving penal sentences or not, are not required to reimburse the State for the costs of their confinement at a State Hospital for the mentally ill, but insanity acquitee Baldauf is.

To distinguish between mentally ill persons based upon conviction of crime and to grant the benefit and class protection to the convicted felon or misdemeanant is capricious and totally without rational relationship to the presumed legislative purpose of preservation of public funds.

The Trial Court found that a rational distinction exists between an insanity acquitee's hospitalization and a convicted felon's transfer to a hospital from a penal institution, since in the latter the person is already in the custody of the state's correctional system, which is maintained at the state's expense.

However, the Trial Court failed to consider that the Legislature has evidenced its intent to exempt from payment all convicted felons and misdemeanants. Incarceration in a state correctional facility is not a condition precedent to receive the benefit, to wit:

> "....excepting those transferred thereto from correctional, penal and reformatory institutions, and persons under indictment or conviction for crime,...."Sec. 5121.12 Rev. Code Ohio. (Emphasis supplied)

Nor does the Statute distinguish between conviction for felony or a misdemeanor.

Successful insanity acquitees are few in number compared to the number of convicted felons and misdemeanants.

The legislative purpose of preservation of public funds is not served by granting a benefit to petty thiefs, muggers, and embezzlers, while imposing a substantial obligation on those judicially committed insanity acquitees, like Mr. Baldauf whose confinement and illness renders him incapable of employment, and who, if his course of treatment is successful and he is discharged, will find

himself not only without funds, but in substantial debt to the state for its benevolence, while a convicted felon can enjoy the beneficence of the State without reimbursement.

Preservation of public funds is a legitimate legislative purpose, but the classifications created by the State to advance this aim are arbitrary, capricious and do not advance the purpose of Sec. 5121.12 Rev. Code Ohio.

CONCLUSION

The Court should note probable jurisdiction of this appeal to decide whether under the Constitution of the United States a State may impose upon an insanity acquitee who is judicially committed to a State hospital for the mentally ill an obligation to reimburse

the State for the costs of his care and treatment and exempt convicted felons, misdemeanants, and persons under indictment from this obligation.

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PROOF OF SERVICE

I, Janice S. Evans, a member of the Bar of the Supreme Court of the United States and an associate of David P. Freed Co., L.P.A., counsel of record for Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf aka William T. Baldauf, Appellant herein, hereby certify that on the 3 day of July, 1984, I served three (3) copies of the foregoing Jurisdictional Statement on each of the parties herein as follows:

On Appellee, the State of Ohio ex rel, Department of Mental Health and Mental Retardation, Section of Reimbursement Services, by mail, by depositing three (3) copies of the Jurisdictional Statement in the United States Post Office mail box in

Painesville, Ohio by first class postage prepaid addressed to Jeffery W. Clark, Assistant Attorney General, Attorney for State of Ohio, 340 East Broad Street, P. O. Box 2398, Columbus, Ohio 43216;

On Appellee, Continental Savings & Loan, by mail, by depositing three (3) copies of the Jurisdictional Statement in the United States Post Office mail box in Painesville, Ohio with first class postage prepaid addressed to William M. Elmore, Esq. at 614 Euclid Avenue, Cleveland, Ohio 44114.

I further certify that all parties required to be served have been served.

Janice S. Evans

Janice S. Evans, Esq.,
Attorney for
Appellant,
Leo J. Talikka

Date: 3 July 1984

APPENDIX

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STATE OF OHIO) IN THE COURT OF APPEALS
) ss
COUNTY OF LAKE) ELEVENTH DISTRICT

STATE OF OHIO, ex rel. Department of Mental Health and Mental Retardation Section of Reimbursement Services,

Appellee,

-vs-

LEO J. TALIKKA, Guardian of the Estate of William Thomas Baldauf, aka William T. Baldauf,

Appellant.

FILED
COURT OF APPEALS
DECEMBER 27, 1983

JUDGMENT ENTRY

CASE NO: 9-265

For the reasons state in the opinion of this court, each assignment of error is overruled, and it is the judgment and order of this court that the judgment of the trial court is affirmed.

/S/ ROBERT E. COOK

PRESIDING JUDGE
ROBERT E. COOK
FOR THE COURT

COURT OF APPEALS
ELEVENTH DISTRICT
LAKE COUNTY

STATE OF OHIO, ex rel Department of Mental Health & Mental Retardation Section of Reimbursement Services,

Plaintiff-Appellee,

-vs-

LEO J. TALIKKA, Guardian of the Estate of William Thomas Baldauf aka William T. Baldauf,

Defendant-Appellant,

and

CITIZENS SAVINGS & LOAN COMPANY,

Defendant-Appellee.

J U D G E S

HON. ROBERT E. COOK, P.J.
HON. ALFRED E. DAHLING, J.
HON. DONALD R. FORD, J.

FILED
COURT OF APPEALS
DECEMBER 27, 1983

CASE NO: 9-265

O P I N I O N

CHARACTER OF PROCEEDINGS:
Civil Appeal from the Court of Common Pleas
Case No. 80-CIV-473

JUDGMENT: Affirmed
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(For Defendant-Appellee)

COOK, J.

On July 9, 1976, William Thomas Baldauf aka William T. Baldauf was found not guilty be reason of insanity as to an indictment for aggravated murder. He was committed for an unspecified period to Lima State Hospital, his commitment to be terminated only when his sanity was

restored and his release would not be dangerous to himself or society.

On May 20, 1980, appellee, State of Ohio, Department of Mental Health and Mental Retardation, filed an action against appellant, Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf, setting forth a claim in the amount of $59,544.08 for the care, support, and maintenance furnished Baldauf at Lima State Hospital from July 14, 1976 through January 31, 1980. After appellant filed an answer, appellee filed a motion for summary judgment. The motion was granted in the amount demanded by appellee in its complaint.

Appellant has appealed the judgment of the trial court and has filed the following two assignments of error:

> "1. The trial court erred to the prejudice of defendant-appellant by holding that Sec. 5121.12 Rev. Code of Ohio does not violate the

> Fourteenth Amendment to the Constitution of the United States and Sec. 2, Article 1. of the Constitution of the State of Ohio.
>
> "2. The trial court erred to the prejudice of defendant-appellant by granting summary judgment to plaintiff-appellee."

The assigned errors are without merit.

R. C. 5121.12 provides:

> "The support and maintenance of patients confined in state hospitals for the mentally ill or in state institutions for the mentally retarded, excepting those transferred thereto from correctional, penal, and reformatory institutions, and persons under indictment or conviction for crime, shall be collected and paid in accordance with this chapter."

Appellant contends that R. C. 5121.12 violates the equal protection provisions of the United States and Ohio Constitutions because there is no rational distinction under said statute between the protected class of patients who are exempt from payment and the non-protected class

of patients who are compelled to reimburse the state for treatment received at a state facility for the mentally ill. He bases his contention on the fact that the class of protected patients includes those under indictment, who are presumed to be innocent, as well as those who have been convicted and/or incarcerated of crime. Since Baldauf was found innocent as a result of a "not guilty by reason of insanity" verdict, appellant urges R.C. 5121.12 violates equal protection by requiring Baldauf to pay for his support and maintenance at a state facility for the mentally ill but does not require those under indictment, who are also innocent, to pay for their support and maintenance.

In State v. Buckley (1968), 16 Ohio St. 2d 128, the Ohio Supreme Court, in paragraph three of the syllabus, held:

> "3. Legislation must apply alike to all persons within a class, and reasonable grounds must exist for making a distinction between those within and those without a designated class. Within the limits of those restrictive rules, a legislative body has a wide measure of discretion. (Paragraph two of the syllabus of Porter v. City of Oberlin, 1 Ohio St. 143, 205 N.E.2d 363, approved and followed.)"

R.C. 5121.12 divides patients in state facilities for the mentally ill an the mentally retarded into two classes as to the payment for support and maintenance they receive in such state facilities. On the one hand, the legislature has not required payment for said support and maintenance by those who are transferred to a state facility from correctional, penal and reformatory institutions nor those who are under indictment or conviction for crime. On the other hand, all other patients in said state facilities are subject to paying for said

support and maintenance in accordance with law.

Appellant argues that R.C. 5121.12 is not based on any rational relationship between a legitimate state interest as to the treatment of those within and without the classification defined in the statute since those under indictment are innocent but are exempt from payment while others, including appellant, are innocent but are in the class of patients that must pay.

However, there is a rational basis for distinguishing between persons in Baldauf's position and those who are exempted from payment for their support and maintenance. Baldauf's commitment is of the same nature and substance as a committment in a civil proceeding. He has not been found guilty of any crime nor does he stand charged with a crime upon release form the state mental facility. On the other hand, those exempted from

payment have been convicted of a crime or have been committed to such a facility until they become competent to stand trial for a crime against the state.

The legislature could logically conclude that those committed to a state mental facility who have been convicted of a crime against the state and those charged with a crime against the state who must stand trial, when competent to do so, should be kept at the expense of the state.

We conclude such a state interest is a reasonable ground for a distinction between those within and those without the designated class established by R.C. 5121.12. The legislature did not abuse its discretion in enacting R.C. 5121.12. Said statute does not violate the equal protection provisions of the United States and Ohio Constitutions.

In his second assignment of error, appellant contends the trial court erred in granting appellee's motion for summary judgment because there was a genuine issue as to a material fact, whether the state facility for mentally ill in which Baldauf was confined met the staffing requirements of the joint commission on accreditation of hospitals. If said facility did not meet said standards, appellant contends only $10 per day, at the most, could be charged Baldauf for his care or treatment pursuant to R.C. 5121.04 (F). He argues appellee failed to offer evidence in support of its motion for summary judgment as to this material fact and, therefore, it was still a genuine issue in the case.

Civ.R.56(C) provides:

> "(C) Motion and proceedings thereon. The motion shall be served at least fourteen days before the time fixed for hearing. The adverse party prior to the day of hearing may serve and file opposing

> affidavits. Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

In the instant cause, appellee filed a proof of claim in support of its motion for summary judgment setting forth the pertinent periods of time and rates charged to appellant. Appellant filed no

evidence contra the motion, only a memorandum in opposition. Appellant relied solely on his pleading which he is not permitted to do under Civ.R.56(E). Said rule requires an adverse party, when a motion for summary judgment is made and supported, to set forth specific facts, by affidavit or otherwise, showing that there is a genuine issue for trial.

R.C. 5121.04(E), in pertinent part, provides:

> "* * * In all actions to enforce the collection of payment for the liability for support, every court of record shall receive into evidence the proof of claim made by the state together with all debts and credits, and it shall be prima facie evidence of the facts therein contained."

In State ex rel. v. Book (1969), 20 Ohio App. 2d 160, this court held:

> "1. A properly authenticated transcript of charges made by the State of Ohio together with all debts and credits must be received by all courts of record

in the state as prima facie evidence of the debt owed for the support of an inmate of a state mental institution.

"2. Upon the admission of a properly authenticated transcript of the charges, a prima facie case is made as to the contents contained therein and the burden of neutralizing them is upon the defendant.

"3. Where a properly authenticated transcript of charges has been received by a court of record and the defendants have offered no evidence to neutralize the prima facie case of the plaintiff, the prima facie case made out by the plaintiff must stand as true and judgment be entered for the plaintiff."

By his failure to raise a factual issue as to the rates charged appellant for his care and treatment, the proof of claim filed by appellee was unchallenged and, because it was prima facie evidence of said charges, no genuine issue as to the material fact of the correctness of said charges remained.

We conclude the trial court did not err in granting appellee's motion for summary judgment.

Judgment affirmed.

/S/ ROBERT E. COOK

PRESIDING JUDGE
ROBERT E. COOK

DAHLING, J.,
FORD, J., concur.

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

STATE OF OHIO, ex rel. DEPARTMENT OF MENTAL RETARDATION, SECTION OF REIMBURSEMENT SERVICES Plaintiff vs LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF, aka, WILLIAM T. BALDAUF, et al Defendants	CASE NO: 80 CIV 473 OPINION & ORDER February 25, 1982

This matter is before the Court to address plaintiff's Motion for Summary Judgment as supported by its Brief and Reply Brief and the certified transcript of account of the Bureau of Support, Department of Mental Health and Mental Bureau. Defendant has filed a Brief in Opposition.

The State of Ohio has brought this action to compel Leo J. Talikka, the guardian of William T. Baldauf, to make available to the State, in particular, the Department of Mental Health and Mental Retardation, funds held by either Mr. Baldauf, himself, or Mr. Talikka acting in his fiduciary position as guardian while Mr. Baldauf remains involuntary institutionalized in a state benevolent facility.

William Thomas Baldauf, having been found not guilty by reason of insanity to the charge of aggravated murder in State v. Baldauf, Case No. 76 CR 78 (C.P. Lake County 1976), was involuntarily committed to the Lima State Hospital pursuant to the procedures outlined in §2945.39 of the Ohio Revised Code.

The propriety of implementing Chapter 5121 to seek reimbursement for the State's support expenditures incurred as a result

of the involuntary and mandatory commitment of one found not guilty by reason of insanity was affirmed in State ex rel. Bricker v. Griffith, 34 Ohio L. Abs. 95, 36 N.E. 2d 489 (Ct. App. Franklin County 1941). This interpretation is further supported by the statutory definition of the term "patient". As defined in §5121.03 of the Ohio Revised Code, the legislature provided

> "[p]atient" means a person receiving care or treatment in a program or facility that provides services to mentally ill or mentally retarded individuals

OHIO REV. CODE ANN. §5121.03(A)(Page 1981).

It is the general view in this state, that the medical care and personal support afforded an insane ward in a benevolent institution maintained by the state represents an expense to be borne primarily by the ward or his guardian

acting in his stead. Bureau of Support in Dept. of Mental Hygiene and Correction v. Kreitzer, 16 Ohio St. 2d 147, 243 N.E. 2d 83 (1968); See OHIO REV. CODE ANN. §5121.04 (B) (1) (Page 1981). As provided in §5121.12 of the Ohio Revised Code,

> [t]he support and maintenance of patients confined in state hospitals for the mentally ill ... excepting those transferred thereto from a correctional, penal and reformatory institutions, and persons under indictment for crime, shall be collected and paid in accordance with this chapter.

OHIO REV. CODE ANN. §5121.12 (Page 1981): Therefore, finding that Mr. Baldauf does not qualify for either exception incorporated into §5121.12, the propriety of the current action remains.

An examination of the Proof of Claim Statement, certified by James H. Cline, Manager of the Bureau of Support for the Department of Mental Health and Mental Retardation, attests to the fact that the

sum of fifty-nine thousand five hundred forty-four dollars and eight cents ($59,544.08) is due and owing the State for the care provided to Mr. Baldauf. Section 5121.04(E) provides that presentment of a proof of claim statement is prima facie evidence of the existing obligations. Specifically, this section reads as follows,

> [i]n all actions to enforce the collection of payment for the liability for support, every court of record shall receive into evidence the proof of claim made by the state together with all debts and credits, and it shall be prima facie evidence of the facts therein contained.

OHIO REV. CODE ANN. §5121.04(E)(Page Supp. 1981). In applying this section, the Court of Appeals for Lake County in State v. Book, 20 Ohio App. 2d 160, 255 N.E. 2d 851 (Ct. App. Lake County 1969), wrote in their syllabus, that,

> 1. A properly authenticated transcript for charges made by the State of Ohio

together with all debts and credits must be received by all courts of record in the state as prima facie evidence of the debt owed for the support of the inmate of a state mental institution.

2. Upon the admission of a properly authenticated transcript of the charges, a prima facie case is made as to the contents contained therein and the burden of neutralizing them is upon the defendant.

3. Where a properly authenticated transcript of charges has been received by the court of record and the defendants have offered no evidence to neutralize the prima facie case of the plaintiff, the prima facie case made out by the plaintiff must stand as true and judgment be entered for the plaintiff.

In the case at bar, the State has submitted a properly authenticated Proof of Claim Statement, thereby presenting a prima facie case in support of the claims alleged in the complaint. Once established, the burden is then shifted to

the patient, or in our case the guardian for the ward, to neutralize and rebut this finding. Farm Bureau Mutual Auto Ins. Co. v. Alms & Doepke Co., 75 Ohio App. 88, 61 N.E.2d 224 (Ct. App. Hamilton County 1944). Furthermore, this being a Motion for Summary Judgment, Ohio Rules of Civil Procedure 56(C) and (E) require that the party opposing the motion present documentary evidence in testimonial form supportive of his position and affirmatively establishing the existence of a genuine issue of material fact upon which reasonable minds might differ.

Defendant contends that the State has not substantiated, in accordance with §5121.04 (F) of the Ohio Revised Code, that Lima State Hospital has or has not met the staffing standards of the joint commission on accreditation of hospitals as certified under Title XIX of the Social Security Act for the post October 7, 1977

period and as such, should not be entitled to charge a rate in excess of ten dollars ($10.00) per day. In support of this contention, defendant has presented no evidence in documentary form, as required by Rule 56 of the Ohio Rules of Civil Procedure, attesting to the fact that Lima State Hospital for the period commencing July 1, 1978 and ending July 21, 1979 did not meet the statutory requirements delineated in §5121.04(F) of the Ohio Revised Code.

Whereas, implicit within the sworn to certified Proof of Claim Statement is the affirmation that the rates utilized therein are in conformity with the statutory language of the Ohio Revised Code, specifically §5121.04(F) of the same. Absent testimonial evidence in documentary form to the contrary, State v. Book, supra, requires that this Proof of Claim Statement be accepted by the Court

as prima facie evidence of the debt owed to the State of Ohio's Department of Mental Health and Mental Retardation.

Furthermore, the Court has reviewed defendant's posture that §5121.12 violates his right to due process and equal protection under the constitutions of both the State of Ohio and the United States of America, and finds the same to be not well taken.

A rational distinction exists between one hospitalized, as in Mr. Baldauf's case, and that of a prisoner serving a criminal sentence who is thereafter sent to a hospital for medical attention and treatment. In the latter, the prisoner was in the custody and supervision of the state's correctional system, maintained at the state's expense. Should subsequent medical care be warranted, his transferal would not extinguish the primary purpose for his detention, but rather aid in

furthering the ultimate goal of rehabilitation. Thereafter, the prisoner would be returned to the correctional facility to serve out the remainder of his sentence.

Whereas in the case of Mr. Baldauf and those similarly situated, they are not committed pursuant to the penal statutes for the purpose of serving rehabilitative sentences. Rather, their commitment to benevolent institutions of the state is based solely on the fact that they were adjudged to be insane, as defined by the law. Their posture is on par with these individuals who undergo civil commitment. Likewise, the financial responsibility accompanying their care should be borne in the same manner. Supportive of this view, though not binding on the decision of this Court, are the decisions in the following cases: In re Sargent, 116 N.H. 77, 354 A. 2d 404, 407 (1976); Keough v. Hoehler, 413

Ill. 409, 109 N.E. 2d 177 (1952); Colorado v. Estate of Burnell, 165 Colo. 205, 439 P. 2d 38, appeal dismissed, 393 U.S. 13 (1968); Department of Mental Health v. Pauling, 47 Ill. 2d 269, 265 N.E. 2d 159 (1970); State ex rel. Dix v. Davis, 292 N.C. 147, 232 S.E. 2d 689 (1977).

Therefore, upon consideration of the arguments presented, the Court finds, pursuant to Rule 56(C) & (E) of the Ohio Rules of Civil Procedure, that reasonable minds can come to but one conclusion regarding the charges owed to the plaintiff by the defendant for treatment afforded during the July 14, 1976 through January 31, 1980 period that William T. Baldauf remained committed at the Lima State Hospital. Finding that no material fact has been presented, the Court finds that plaintiff is entitled to a judgment as a matter of law.

Judgment is hereby rendered on behalf of the plaintiff against the defendant, Leo J. Talikka, Guardian of the Estate of William T. Baldauf in the sum of fifty-nine thousand five hundred forty-four dollars and eight cents ($59,544.08) plus interest computed at the rate of six per cent (6%) from January 3, 1980.

The costs of the within action shall be assessed against the defendant, Leo J. Talikka, Guardian of the Estate of William T. Baldauf. Execution of this Opinion and Judgment Entry shall be in accordance with those statutory procedures prescribed for the expenditure of funds as determined by the Honorable Fred V. Skok of the Probate Division of the Lake County Court of Common Pleas.

Exceptions are noted for the defendants.

IT IS SO ORDERED.

/S/James W. Jackson

James W. Jackson
Judge of the Court of
Common Pleas

Copies:

David P. Freed, Esq.
Alan G. Gelbman, Asst. Atty. General
Will M. Elmore, Esq.
The Honorable Fred V. Skok

THE SUPREME COURT OF OHIO

THE STATE OF OHIO) 1984 Term
) ss
CITY OF COLUMBUS) To Wit:April 18, 1984

State of Ohio, ex rel.) No:84-335
Department of Mental)
Retardation,) APPEAL FROM THE
) COURT OF APPEALS
Appellee,)
)
vs)
) FOR LAKE COUNTY
LEO J. TALIKKA,)
GUARDIAN et al.,)
)
Appellants.)

This cause here on appeal as of right from the Court of Appeals for Lake County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is ordered by the Court that this Motion is overruled.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lake County for entry.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____, 19___

_____Clerk

_____Deputy

THE STATE OF OHIO) 1984 Term
) ss
CITY OF COLUMBUS) To Wit:April 18, 1984

State of Ohio, ex rel.) No:84-335
Department of Mental)
Retardation,) MOTION FOR AN
) ORDER DIRECTING
Appellee,) THE COURT OF
) APPEALS
vs)
) FOR LAKE COUNTY
LEO J. TALIKKA,)
GUARDIAN et al.,) TO CERTIFY ITS
) RECORD
Appellants.)

It is order by the Court that this Motion is overruled.

COSTS:

Motion Fee, $20.00 Paid by David Freed.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ____ day of _____,19___
_____Clerk
_____Deputy

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO, ex rel Department of Mental Health and Mental Retardation Section of Reimbursement Services,	)	CA 9-096
Plaintiff-Appellee	)	JUDGMENT ENTRY
-vs-	)	
LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF aka WILLIAM T. BALDAUF,	)	FILED COURT OF APPEALS NOVEMBER 29 1982
Defendant-Appellant	)	

Appeal dismissed for lack of a final, appealable order consistent with Civil Rule 54(B).

/S/Edwin T. Hofstetter

PRESIDING JUDGE
EDWIN T. HOFSTETTER

COURT OF APPEALS OF OHIO,
ELEVENTH DISTRICT

COUNTY OF LAKE

COURT OF APPEALS CASE NO. 9-096

STATE OF OHIO, ex rel. Department of Mental Health Mental Retardation Section of Reimbursement Services

Plaintiff-Appellee

-vs-

LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF aka WILLIAM T. BALDAUF,

Defendant-Appellant

and

CITIZENS SAVINGS & LOAN COMPANY,

Defendant-Appellee

JUDGES:
HON. EDWIN T. HOFSTETTER, P.J.
HON. ROBERT E. COOK, J.
HON. ALFRED E. DAHLING, J.

O P I N I O N

FILED
COURT OF APPEALS
NOVEMBER 29, 1982

APPEARANCES:

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ATTORNEY FOR DEFENDANT-APPELLANT

Will M. Elmore
614 Euclid Avenue, Cleveland, Ohio 44114

ATTORNEY FOR DEFENDANT-APPELLEE

HOFSTETTER, P. J.

The instant matter commenced with the filing of a complaint (with attachment) under authority of O. R. C. 2715.01, where authority for attachment before judgment is permitted. The attachment was sought, by motion, against funds held by one of the defendants in the complaint, the Citizens Savings & Loan Company, as to a certificate of deposit held by it in behalf of the other defendant, Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf.

The trial court, by Judgment Entry, denied the motion for prejudgment attachment. There is no dismissal of Citizens Savings & Loan Company as a defendant in the complaint.

The prayer of the complaint, in addition to seeking judgment against the Guardian of the Estate, sought an "Order and direction upon the defendant, Citizens Savings and Loan Company, that it apply the proceeds of its Certificate of Deposit" held in "the name of Leo J. Talikka as his guardian towards the judgment rendered herein but not in excess thereof."

Continental Federal Savings and Loan Association, successor to Citizens Savings & Loan Company, filed an answer acknowledging the possession of two savings accounts totalling $22,099.85.

The Guardian, as defendant, filed a separate answer.

The plaintiff then filed a motion for summary judgment against the defendant guardian, which was granted. That judgment was appealed.

It is clear, from the record, that Continental Federal Savings and Loan Association has funds in its possession in the name of Leo J. Talikka, Guardian, It is also clear that, under normal circumstances, the Savings and Loan Association would release money to the depositor guardian upon his authorization.

In the instant case, however, the defendant Savings and Loan prayed that it may be protected in any entry made by the court. As one of the parties against whom the complaint was filed, and which complaint prompted its answer, it appears that, upon the granting of summary judgment only against defendant Talikka, the rights and liabilities of the

defendant Savings and Loan Association have not been clearly adjudicated.

It is the opinion of this court that until an order of the trial court specifically adjudicates the rights and liabilities of the Savings and Loan Association, as a party to the action, that there is no final, appealable order consistent with Civil Rule 54 (B).

Appeal dismissed.

/S/ Edwin T. Hofstetter

PRESIDING JUDGE
EDWIN T. HOFSTETTER

COOK, J.,

DAHLING, J., concur

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

STATE OF OHIO, ex rel., DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, SECTION OF REIMBURSEMENT SERVICES Plaintiff -vs- LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF aka WILLIAM T. BALDAUF, Incompetent, et al Defendants.	CASE NO. 80 CIV 473 NUNC PRO TUNC JUDGMENT ENTRY February 1, 1983

In response to the November 29, 1982 Opinion and Judgment Entry of the Court of Appeals, Eleventh Appellate District, Lake County, Ohio, the Court finds that with the denial of Plaintiff's Motion for Pre-Judgment Attachment on August 11, 1980, no cause of action remains stated against defendant Continental Federal Savings and Loan Association, fna Citizens Savings and Loan Association.

Accordingly, plaintiff's complaint against Continental Federal Savings and Loan Association is hereby dismissed without prejudice to the plaintiff's rights to attach funds on deposit with it belonging to defendant Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf aka William T. Baldauf, Incompetent.

This Court's Opinion and Order of February 25, 1982 shall remain in full force and effect.

IT IS SO ORDERED.

/S/ James W. Jackson

JAMES W. JACKSON
Judge of the Court of
Common Pleas

Copies:
Alan G. Gelbman, Asst. Attorney General
Will M. Elmore, Esq.
David P. Freed, Esq.

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

STATE OF OHIO, ex rel.) DEPT. OF MENTAL HEALTH) AND MENTAL RETARDATION) SECTION OF REIMBURSE-) SERVICES	)	CASE NO. 80 CIV 473
Plaintiff	)	
v.	)	JOURNAL ENTRY
LEO J. TALIKKA, Guardian of the Estate) of WILLIAM THOMAS BALDAUF, aka WILLIAM T. BALDAUF, Incompe- tent, et al	)	February 7, 1983
Defendants	)	

It has come to the Court's attention that its Judgment Entry of February 1, 1983, journalized with the Lake County Clerk of Court on February 1, 1983 was incorrectly captioned as a "Nunc Pro Tunc Judgment Entry".

Pursuant to Rule 60(A) of the Ohio Rules of Civil Procedure, the Court hereby vacates that portion of the caption

referring to the nunc pro tunc nature of the judgment entry. The body of the judgment entry shall remain unaffected by this correction of the caption.

Exceptions are noted for the parties.

IT IS SO ORDERED.

/S/ James W. Jackson

JAMES W. JACKSON
Judge of the Court of
Common Pleas

Copies:
David P. Freed, Esq.
Alan G. Gelbman, Asst. Attorney General
Will M. Elmore, Esq.

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO, ex rel. Department of Mental Health and Mental Retardation Section of Reimbursement Services,	CASE NO. 9-265
Appellee,	
vs	
LEO J. TALIKKA, Guardian of the Estate of William Thomas Baldauf aka William T. Baldauf,	
Appellant,	
and	
CITIZENS SAVINGS & LOAN CO.,	
Appellee	

FILED
COURT OF APPEALS
MAY 29 1984
ANDY J. TOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf aka William T.

Baldauf the Appellant above named, hereby appeals to The Supreme Court of the United States of America from the final Judgment of the Court of Appeals for the Eleventh Appellate District of the State of Ohio affirming the Judgment of the Court of Common Pleas of Lake County in this action, which final judgment was entered in this action on the 27th day of December, 1983, and over which judgment the Supreme Court of the State of Ohio refused to exercise discretionary review on the 18th day of April, 1984, by sua sponte dismissing the appeal for the reason that no substantial constitutional question was found by the Supreme Court of Ohio to exist and by overruling the Appellant's Motion to certify the Record.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257 (2).

DAVID P. FREED CO., L.P.A.

David P. Freed, Esq.
Attorney for Leo J.
Talikka, Appellant
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Painesville, Ohio 44077
Telephones: (216) 352-3375
(216) 942-7790

PROOF OF SERVICE

I, David P. Freed, a member of the Bar of the Supreme Court of the United States is counsel of record for Leo J. Talikka, Guardian of the Estate of William Thomas Baldauf aka William T. Baldauf, Appellant herein, hereby certify that on the 29th day of May, 1984, I served three (3) copies of the foregoing Notice of Appeal on each of the parties herein as follows:

On Appellee, the State of Ohio ex rel, Department of Mental Health and Mental Retardation, Section of Reimbursement Services, by mail, by depositing three (3) copies of the Notice of Appeal in the United States Post Office mail box in Painesville, Ohio by first class postage prepaid addressed to Jeffery

W. Clark, Assistant Attorney General, Attorney for State of Ohio, 340 East Broad Street, P. O. Box 2398, Columbus, Ohio 43216;

On Appellee, Continental Savings & Loan, by mail, by depositing three (3) copies of the Notice of Appeal in the United States Post Office mail box in Painesville, Ohio with first class postage prepaid addressed to William M. Elmore, Esq. at 614 Euclid Avenue, Cleveland, Ohio 44114.

I further certify that all parties required to be served have been served.

David P. Freed

David P. Freed, Esq.,
Attorney for Appellant,
Leo J. Talikka

Date: May 29, 1984

Supreme Court, U.S.
FILED
AUG 2 1984
ALEXANDER L. STEVAS
CLERK

NO. 84-40

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF, aka WILLIAM T. BALDAUF,
Appellant,

-vs-

STATE OF OHIO, ex rel. DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, SECTION OF REIMBURSEMENT SERVICES,
Appellee,

-vs-

CITIZENS SAVINGS AND LOAN COMPANY,
Appellee.

ON APPEAL FROM THE OHIO ELEVENTH APPELLATE DISTRICT COURT OF APPEALS, LAKE COUNTY, OHIO

APPELLEE STATE OF OHIO'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM LOWER COURT JUDGMENT

ANTHONY J. CELEBREZZE, Jr.
Attorney General of Ohio

By: DEBORAH A. PIPERNI
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QUESTION PRESENTED

Whether Section 5121.12 of the Ohio Revised Code violates the Fourteenth Amendment to the United States Constitution when it exempts from the obligation to reimburse the State for care and treatment at State hospitals for the mentally ill, convicted felons, misdemeanants, and persons under indictment, but imposes an obligation of reimbursement on insanity acquitees judicially committed.

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 33.2(a)(4) of the Rules of the Supreme Court of the United States, the Appellee State of Ohio has taken the liberty to correctly caption the parties to the proceeding as indicated on the cover page. Appellant's Jurisdiction Statement erred in this regard.

Pursuant to Rule 15.1(b) of the Rules of the Supreme Court of the United States, the parties to the instant proceedings and those parties to the proceeding from which this appeal is taken, are fully listed in the caption on the cover page. However, the proper title of Appellee State of Ohio is as follows: State of Ohio, Department of Mental Health, Office of Reimbursement Services.

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NO. 84-40

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

LEO J. TALIKKA, Guardian of the Estate of WILLIAM THOMAS BALDAUF, aka WILLIAM T. BALDAUF,.

Appellant,

-vs-

STATE OF OHIO, ex rel. DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, SECTION OF REIMBURSEMENT SERVICES,

Appellee,

-vs-

CITIZENS SAVINGS AND LOAN COMPANY,

Appellee.

ON APPEAL FROM THE OHIO ELEVENTH APPELLATE DISTRICT COURT OF APPEALS, LAKE COUNTY, OHIO

APPELLEE STATE OF OHIO'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO AFFIRM LOWER COURT JUDGMENT

STATEMENT OF THE CASE

Appellee State of Ohio agrees with and adopts Appellant's Statement of the Case with the following additions.

On January 25, 1984, Appellant filed a Notice of Appeal to the Supreme Court of Ohio in the Court of Appeals of Ohio,

Eleventh Appellate District. Memoranda in support and opposition to jurisdiction were filed by the parties. The Ohio Supreme Court sua sponte dismissed the appeal on April 18, 1984 for the reason that no substantial constitutional question was presented.

Appellant filed a Notice of Appeal to the United States Supreme Court on May 29, 1984 in the Ohio Court of Appeals, Eleventh Appellate District. Appellant's Jurisdictional Statement was served upon counsel for the Appellee State of Ohio on July 5, 1984. It is from this appeal that the Appellee timely moves for dismissal.

MOTION TO DISMISS

Now comes the Appellee, State of Ohio, Department of Mental Health, Office of Reimbursement Services, by and through their counsel of record and member of the Bar of this Court, and respectfully moves this Court for an Order dismissing the appeal pursuant to Rule 16.1(a), (b) of the Rules of the Supreme Court of the United States for the following reasons.

I. THE COURT SHOULD DISMISS THE APPEAL AS IMPROPERLY FILED AND NOT IN CONFORMITY WITH THE RULES OF THE SUPREME COURT OF THE UNITED STATES PURSUANT TO RULE 16.1.

On May 29, 1984, Appellant filed a Notice of Appeal to the Supreme Court of the United States in Ohio's intermediate appellate court, the Court of Appeals for the Eleventh Appellate District, Lake County, Ohio. Appellant's

Notice seeks relief from the December 27, 1983 final judgment of the intermediate Court of Appeals of the State of Ohio, the appeal from which the Ohio Supreme Court, Ohio's highest court of appeals, dismissed for lack of substantial constitutional question on April 18, 1984.

First, Appellee State of Ohio submits this Court is without jurisdiction to review the instant appeal since the May 29, 1984 Notice of Appeal was filed 189 days after the final judgment was rendered by the Ohio Court of Appeals on December 27, 1983. Rule 12.1 of the Rules of the Supreme Court of the United States and 28 U.S.C. Section 2101(c) require the "appeal be taken or applied for within ninety days after the entry of such judgment or decree." 28 U.S.C. Section 2101(c). The time for filing of the Notice of Appeal commences on the date of the judgment sought for review is rendered. Rule 11.3 of the Rules of the Supreme Court of the United States.

Appellee State of Ohio submits, therefore, the Clerk should have refused to receive Appellant's Jurisdictional Statement since the Notice of Appeal was untimely filed. See Rule 12.1 of the Rules of the Supreme Court of the United States.

Secondly, the Appellee State of Ohio urges dismissal of the appeal since Appellant filed the Notice of Appeal in the wrong court. Appellant should have appealed from the decision of the Ohio Supreme Court, dated April 27, 1984, which refused to review the matter. Had Appellant properly filed his Notice of Appeal to the United States Supreme Court from the Ohio Supreme Court, rather than the intermediate Court of Appeals, the appeal would be timely filed. However, since Appellant chose to appeal from the Ohio Court of Appeals, he is bound by the ninety day time restrictions imposed by 28 U.S.C. Section 2101(c) and Rule 12.1 of the Rules of the Supreme Court of the United States.

In conclusion, since Appellant untimely and improperly filed his Notice of Appeal and, thus, failed to conform to the requirements of the Rules of the Supreme Court of the United States, Appellee State of Ohio urges this honorable Court to dismiss the appeal for failure to conform to the requirements of 28 U.S.C. Section 2101(c) and Rules 16.1 and 33.7.

In the alternative, the Appellee respectfully urges affirmance of the lower court's decision for the reasons stated in the following Motion to Affirm.

MOTION TO AFFIRM

Now comes the Appellee, State of Ohio, by and through counsel of record, and respectfully moves, in the alternative, for an Order affirming the December 27, 1983 decision of the Ohio Court of Appeals for the Eleventh Appellate District and the April 27, 1984 Order of the Ohio Supreme Court as not posing a substantial federal question for this Court's review.

I. THE ASSESSMENT OF STATE INSTITUTIONAL SUPPORT CHARGES AGAINST INDIVIDUALS NOT UNDER INDICTMENT OR CONVICTION, IN CONNECTION WITH THEIR COMMITMENT TO STATE MENTAL HEALTH FACILITIES PURSUANT TO A FINDING OF NOT GUILTY BY REASON OF INSANITY, DOES NOT VIOLATE THEIR RIGHT TO EQUAL PROTECTION OF THE LAW, BECAUSE SUCH CLASSIFICATION WITH RESPECT TO THE ASSESSMENT OF SUCH CHARGES BEARS A RATIONAL RELATIONSHIP TO A LEGITIMATE LEGISLATIVE PURPOSE OR OBJECTIVE.

A. Appellant Does Not Present A Substantial Federal Question For This Court's Review.

Appellant does not appeal or dispute the finding of the courts below that his commitment to a State mental health institution after a criminal court finding of not guilty by reason of insanity is of the same nature and substance as a commitment in a civil proceeding. Nor does Appellant dispute the rational distinction between those in his "non-protected" class and those "protected" either under indictment for crime or transferred to State mental health institutions from correctional, penal, and reformatory institutions. Appellant's sole argument is that "[t]he legislative purpose of preservation of public funds is not served by granting a benefit to petty thiefs [sic], muggers, and embezzlers. . . ." Appellant's Jurisdictional Statement at 19.

Appellant's constitutional argument thus reduces to a claim that there exists a class,

exempted from liability for payment for their support, within which certain non-incarcerated convicts or convicted misdemeanants might receive benefit of free mental health services, were they to affirmatively assert their status as a defense to Appellee State of Ohio's routine charging of liability to its patients. Even assuming that such a situation might, on rare occasion, transpire, it is clear that:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369."

Dandridge v. Williams, 397 U.S. 471, 485, cited with approval in Schweiker v. Wilson, 450 U.S. 221, 234 (1981).

Appellee State of Ohio does not acknowledge that Appellant's interpretation of the

subject statute is correct, and believes that Appellant's hypothetical inequities are groundless. But, assuming arguendo that such an interpretation is correct, the possibility that an extremely small group of convicted persons might be relieved of liability for a subsequent period of treatment in a state mental health institution, but that other persons (distinguishable from such sub-class only by their having been found instead to be not guilty by reason of insanity with regard to similar acts which they committed) are not so relieved of payment for such state charges, is not a question of such gravity as to call the State's support statute, Section 5121.12, Ohio Revised Code, into question under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

B. A Rational Distinction Exists Between The Subject Class In Furtherance Of Reasonable State Policies.

Those mentally ill persons exempted from payment for their support under Section 5121.12, Ohio Revised Code are: (1) those persons transferred from penal, correctional and reformatory institutions; (2) those persons under conviction for crimes; and, (3) those persons under indictment for crimes. Thus, all of such persons, in one way or another, are enmeshed in the criminal justice system concurrent with their commitment to state mental health facilities. Further, all persons exempted from payment for their support will be returned, upon determination of their competency to stand trial or of their restoration to sanity, to the jurisdiction and control of either (1) the penal, correctional or reformatory institutions; (2) a parole board or probation officer; or (3)

the indicting authority. On the other hand, those persons involuntarily civilly committed and those committed after a finding of not guilty by reason of insanity will routinely be released into the community upon restoration of their sanity.

The State policy related to this overall classification is not currently expressed on the face of the statute, nor does the State of Ohio maintain an official legislative history; however, a reasonable State policy of certain groups or classifications of patients connected with the criminal justice system is readily supportable. Appellant's "presumed legislative purpose of preservation of public funds" is but a general backdrop to the following additional reasons for the policy considerations. First, in the case of transferees from penal, correctional and reformatory institutions, the State has taken away the individual's ability to live in the community and earn a living. In exchange, the State

must arguably assume the burden of feeding, clothing and sheltering such individuals, and providing for their medical needs, one of which may be mental health care. Treatment of this group can also be viewed as part of a State policy to rehabilitate those under its custody, and as in furtherance of a policy to avoid the unnecessary danger and expense that would result from the intermixed confinement of prison inmates and mentally ill persons.

Secondly, a person who is sent to a state mental health facility between the time he is indicted for a crime and the time he is tried, is almost invariably committed to that facility because he is deemed not adequately competent to stand trial. The State has an interest in obtaining a swift, accurate determination of the mental capacity of such an individual under indictment, either to ascertain his competence to stand trial, or to establish his mental health capacity at the

time he committed actions which might be deemed criminal in nature. Even while being treated in the mental health facility, such a person is still under the continuing restraints of the criminal justice system and, upon being restored to competency, will be jailed, imprisoned, or otherwise restricted in his physical movements, unless released on bail or recognizance by that criminal justice system, until he is tried. A person under indictment logically should be viewed as a member of a sub-class of persons who are involuntarily, civilly committed persons who have no such criminal justice restraints upon their movements and who will be completely free to do as they wish upon being deemed adequately restored to competency and not in need of further institutionalization. As such, the commitment of a person under indictment is in furtherance of State administrative and investigative purposes to modify or forestall unnecessary criminal proceedings.

Thirdly, one who is convicted of a crime may, at the time of sentencing, or at any time thereafter, e.g., while on parole, require hospitalization for some mental illness or for observation in connection with his crime or as a condition of his parole or probation. Whether he is to be released upon restoration of sanity to a correctional, penal or reformatory institution, or to a parole board or probation officer, his commitment is an outgrowth of concommitant criminal proceedings or supervision. Again, his subclass of mentally ill persons under conviction is distinguishable from that larger distinct group of persons merely involuntarily civilly committed who are completely free to do as they wish upon being discharged from that mental health facility.

Appellant's argument that "convicted misdemeanants" might be given free treatment upon voluntary admission for a mental illness completely unrelated to the acts for which

they were convicted constitute not only an extremely small set of conceivable situations, but is at odds with the longstanding, standard interpretation of the charging statute, which exempts from payment for support only those persons institutionalized for treatment in state mental health facilities "under," or through conviction, not just any convict or misdemeanant at any time after conviction. See Section 5122.12, Ohio Revised Code.

Cases supporting the constitutionality of such classifications in similar statutes distinguishing liability include: Department of Mental Health v. Pauling, 47 Ill.2d 269, 265 N.E.2d 159 (1970); State ex rel. Dorothea Dix Hospital v. Davis, 292 N.C. 147, 232 S.E. 2d 698 (1977), and Fayle v. Stapley, 607 F.2d 858 (9th Cir. 1979).

In addition, there is at least one Ohio case which has held that the assessment of support charges against patients, involuntari-

ly civilly committed to state mental health hospitals, but not against persons committed to the same hospital while under either indictment or conviction, does not constitute a denial of equal protection to those persons in the former category or classification. See Fulk v. Moritz, Case No. C74-230 (N.D. Ohio 1981), cert. denied, 103 S.Ct. 1763 (1983), attached in the Appendix.

It is therefore plain that the State has established a reasonable classification of chargeable and non-chargeable patients in its mental health care facilities which are rationally related to the furtherance of legitimate state policies. Appellant has not presented any evidence or any argument of manifest inequity or injustice sufficient to challenge these classifications, and therefore the April 18, 1984 Order of Dismissal in Case No. 84-335 by the Supreme Court of Ohio sua sponte of the Appeal from the Court of Appeals for Lake County, Ohio, for the reason

that no substantial constitutional question exists herein, should now be affirmed.

CONCLUSION

For the foregoing reasons, the Appellee State of Ohio urges this Court to dismiss the Appeal for failure to conform to the requirements of 28 U.S.C. Section 2101 and the Rules governing this Court. In the alternative, the Appellee State of Ohio urges this Court to affirm the decision of the Ohio Supreme Court which found no substantial constitutional question and the judgment of the Ohio Court of Appeals upholding the constitutionality of Section 5121.12, Ohio Revised Code.

Respectfully submitted,

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CERTIFICATE/PROOF OF MAILING

I, Deborah A. Piperni, a member of the Bar of the Supreme Court of the United States and an Assistant Attorney General for the State of Ohio, counsel of record for Appellee State of Ohio, Department of Mental Health, Office of Reimbursement Services, hereby certify that on this 31st day of July, 1984, I served three (3) copies of the foregoing Motion To Dismiss Or, In The Alternative, Motion To Affirm Lower Court Judgment on the counsel of record for the Appellant, Janice S. Evans, P.O. Box 920, Painesville, Ohio 44077, and Appellee Citizens Savings & Loan Co., William M. Elmore, Esq., at 614 Euclid Ave., Cleveland, Ohio 44114, by depositing such in the United States Post Office mail box in Columbus, Ohio with first class postage prepaid.

I further certify that all parties required to be served have been served.

DEBORAH A. PIPERNI
Assistant Attorney General

APPENDIX

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SECTION 5121.12, OHIO REVISED CODE

Section 5121.12 Support and maintenance of patients.

The support and maintenance of patients confined in state hospitals for the mentally ill or in state institutions for the mentally retarded, excepting those transferred thereto from correctional, penal and reformatory institutions, and persons under indictment or conviction for crime, shall be collected and paid in accordance with this chapter.

HISTORY: GC § 1890-46; 117 v 550(565), § 46; 119 v 616(628); 120 v 309; 121 v 423 (434); became 5123.40 (Eff 10-1-53); 133 v H 688(Eff 11-21-69); became 5121.12, 138 v H 900. Eff 7-1-80.

Not analogous to former RC §5121.12 (GC § 1810; RS § 624; S&S 52, 53; 62 v 137; 63 v 96), repealed, 138 v H 900, eff 7-1-80.

The effective date of HB 900 is set by section 3 of the act.

Research Aids

Admission or commitment:
O-Jur2d: ins Per § 16
Am-Jur2d Welf L §§ 69-72

Support and maintenance of patients:
O-Jur2d: Hospit §§ 37, 38
Am-Jur2d: Welf L § 91

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CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT
TOLEDO, OHIO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

George R. Fulk, et al.,

Plaintiffs

vs.

Case No. C 74-230

Timothy B. Moritz, M.D., et al.,

Defendants

OPINION AND ORDER

YOUNG, J.:

This action was originally filed June 13, 1974, as a class action alleging certain violations of the civil rights of the plaintiffs by various state and federal officials. Under the laws then applicable, a three-judge court was required to reach the ultimate re olution of the issues in the case. Such a court was constituted, consisting of The Hon. George C. Edwards of the United States Court of Appeals for the Sixth Circuit, and District Judges Don J. Young and Nicholas J. Walinski of the Northern District of Ohio, Western Division.

Over the period of years that followed, discovery was conducted and various procedural matters were disposed of by order of Judge Young, the District Judge to whom the case was assigned. A conditional class certification was made, motions of the parties for summary judgment were filed and overruled, and various pretrial conferences were held.

Ultimately, it was stipulated by the parties that there were no issues of fact which depended for their resolution upon determining the credibility of witnesses, and that the case would be submitted to the Court upon transcripts of testimony, the exhibits approved by the parties, and written briefs. All this material has been filed and considered by the Court, and the case is ready for final disposition. This opinion will constitute the Court's findings of fact and conclusions of law.

The plaintiffs originally asserted five claims for relief as follows:

1. That the plaintiffs were deprived of their liberty by committment for rehabilitative treatment to institutions under control of the Ohio Department of Mental Health and Mental Retardation,[1] and were required to pay for their daily support and care while in the institution.[2] People incarcerated in state penal institutions under the

1. Title 51, O.R.C. §5122.47.
2. Title 51, O.R.C. §§5121.03, 04, 05 and 40.

In conformity with Rule 77(d) F.R.C.P. please take notice that the following order of judgment was entered in this Court on: September 28, 1981 James S. Gallas, Clerk

Ohio Department of Rehabilitation and Treatment[3] who are given rehabilitation treatment the same as that provided to the plaintiffs are not required to pay for their daily support and care while imprisoned. This is discriminatory toward the plaintiffs and denies them due process and the equal protection of the law;

II. That the state defendants, requiring the plaintiffs to pay for their care and support while committed, did not provide them with adequate and comprehensive psychiatric treatment in accordance with statutory standards, thus depriving them of due process of law;

III. That the federal defendants failed to provide the plaintiffs with procedural safeguards when designating representative payees for benefits to which plaintiffs are entitled under federal law,[4] thus depriving them of their property without due process of law;

IV. That the federal defendants in appointing representative payees for committed persons gave preference to state institutions over relatives of the plaintiffs, thus denying the plaintiffs the equal protection of the law;

V. That the federal defendants designating state institutional officials as representative payees resulted in the state officials being able to collect state support costs without proceeding through state legal processes in violation of the federal statutory provision[5] that exempts Social Security payments from execution, levy, attachment, garnishment or other legal process, therefore rendering the state defendants liable to the plaintiffs for the amounts received as representative payees and paid over to apply to plaintiffs' support obligations to the State of Ohio.

By stipulation of the parties, the plaintiffs' second claim for relief was dismissed without prejudice. Thus, there remain for consideration only four claims, two against the state defendants and two against the federal defendants.

I.

The Claims Against the State Defendants

Basically, the plaintiffs' first claim that it is unconstitutional, as a denial of due process and the equal protection of the law, for the State to charge for support and care to patients who are involuntarily committed to state mental treatment institutions by civil process when no such charges are made to patients who are committed by criminal process.

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3. Title 51, O.R.C. §5120.44.
4. 42 U.S.C. §405(j) and (l); 20 C.F.R. 404.1601-1610.
5. 42 U.S.C. §407.

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While most of the cases dealing with this problem deal with persons committed to mental institutions after acquittals of criminal charges by reason of insanity, or persons accused of crime discharged without indictment because of insanity, basically the commitment in such cases is no different from that of those persons committed by civil process. The rationale for such commitment is that the person needs confinement and treatment for the protection of himself and the public. As soon as his condition improves beyond the point when confinement is necessary, the patient is free to return to the community. There is thus a rational basis for the state making a differentiation between such persons and persons covicted of and imprisoned for crime in the matter of support payments. Persons imprisoned for crime may not return to the community until sentence has been served, even though their illness has been relieved.

Perhaps the best expression of this rationale is found in the opinion of the Supreme Court of New Hampshire in the case of In the Matter of Sargent, 116 N.H. 77, 354 A2d 404, 407:

> "There is a rational basis for distinguishing between persons in Sargent's position and prisoners who have been convicted, sent to prison and then transferred to the hospital. They are still prisoners even while at the hospital and when hospitalization is no longer necessary or desirable as to them they are not discharged but must return to the prison under their sentence. The legislature could logically conclude that such prisoners should be kept at the expense of the state when transferred to the hospital while those in Sargent's position should pay if able. The legislature is also entitled to find that it is more desirable and beneficial to be committed to the hospital than to prison. There is thus a rational basis for not charging those confined to the prison who by reason of insanity have not been indicted, are found not guilty or plead not guilty."

In addition to these considerations, there is a basic fallacy in the plaintiffs' assumption that persons sentenced to imprisonment upon conviction of crime cannot be, or are not, charged for their support and maintenance while so imprisoned.

Basically, many, if not most, of such prisoners pay for their support and maintenance by working at many routine tasks, such as cleaning, cooking, food service, maintenance, laundry, and various farming or industrial tasks for little or no wages. Beyond that, prisoners in work-release programs are required to pay for their board in the prison.[6]

Thus, long-standing laws and practices permit the state to require persons involuntarily confined to pay the cost of their support and care when they are financially able to do so. Certainly the state has strong reasons and a rational purpose in making such charges. For this reason also, the plaintiffs' first claim for relief must be denied.

The second of plaintiffs' remaining claims for relief is the claim that although all Social Security benefits are by statute[7] exempt from execution,

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6. Title 51 O.R.C. §5147.28(c)(1)
7. 42 U.S.C. §407

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levy, attachment, garnishment or other legal process, designating a state official as representative payee in effect is an attachment of the plaintiffs' benefits to pay the state's claims for support and care.

The most serious flaw in this argument is that whoever the designated payee of a social security beneficiary may be, the payee, like any other fiduciary, is required to disburse the payments he receives in accordance with law. It is hard to imagine that an individual designated payee would not be personally liable to the beneficiary for any wrongful expenditure of benefits received.

The regulations for the use of benefits by designated payees,[8] require that the benefits be used for the beneficiary's maintenance, including customary institutional charges when the beneficiary is confined in an institution. The regulations give maintenance and customary institutional charges the highest priority in the expenditure of benefit payments.

Thus, the state defendants, in applying plaintiffs' benefit payments made to them as designated beneficiaries, were not in effect attaching or garnishing the benefits, but simply doing what the federal regulations required them to do.

However, even if it be considered that the collection of the state support payments were improper, the plaintiffs' claim for repayment of the moneys encounters fundamental constitutional problems. The Eleventh Amendment to the Constitution of the United States bars the entering of judgment against a state. The plaintiffs here are seeking to recover moneys paid to the State of Ohio, even though that State is not named as a party.

The named state defendants are all officers or employees of the State, acting in their official capacities in doing what was done here. They are entitled to official immunity for their acts under the doctrine of Scheuer v. Rhodes 416 U.S. 232 (1974), and the later explanatory cases of Wood v. Strickland, 420 U.S. 308 (1975) and O'Connor v. Donaldson, 422 U.S. 563 (1975).

However the problems are approached, it is clear that the claims against the state defendants must be dismissed.

II. The Claims Against the Federal Defendants

The basic problem with the claims against the federal defendants is that in the long period of time that has elapsed since the commencement of this action, there have been substantial changes in the law governing the substantive and procedural aspects of this litigation.

In the procedural aspects of the case, in its rulings of December 11, 1974, March 11, 1976, and April 12, 1976, the Court found that it had jurisdiction pursuant to 5 U.S.C. §702 of the Administrative Procedure Act.[9] However, in 1977 the Supreme Court precluded jurisdiction under §702 over plaintiffs' claims.[10] Somewhat earlier, in Weinberger v. Salfi, 442 U.S. 749 (1975), the Supreme Court held that §205(g) of the Social Security Act provides the exclusive basis for jurisdiction over actions brought for matters arising under the Social Security Act.

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8. 20 C.F.R. 404.1604 and 1606.
9. 5 U.S.C. §§701-706
10. Califano v. Sanders, 430 U.S. 99 (1977).

Under these statutes and decisions, there must first be a hearing and final decision of the Secretary, which may then be appealed to the United States District Court. The plaintiffs have not satisfied these jurisdictional requirements, and for that reason their action must be dismissed.

The substantive claims of the plaintiffs against the federal defendants are based on claimed lack of due process in the appointment of designated payees by the federal defendants. The plaintiffs argue that these appointments were made without giving them either notice or hearing, nor were they given any rights to appeal from the decisions making the appointments.

Whatever the statute may have been when this action was commenced, the record shows clearly and conclusively that the procedures for the appointment of designated payee thereafter were substantially revised.

Section 205(j) of the Social Security Act[11] provides in substance that when it appears to the Secretary that the interest of an applicant entitled to payment would be served thereby, certification of payment may be made for the applicant's use or benefit to a relative or some other person. Certain Social Security Regulations, No. 4[12] and No. 16,[13] and also Part 3 of the Social Security Claim Manual, implement this statute.

Without examining in detail the provisions for notice, hearings, and appeals, some of which became effective November 18, 1975, and some October 1, 1976, it is clear today that at the very least the matter of who shall be named as a designated payee requires full notice and hearing, and is appealable, by proper procedural steps, to the United States Courts.

Originally, a three-judge court of the Northern District of Illinois found, in the case of Tidwell, et al. v. Weinberger, Nos. 73-6-3014 and 74-6-133 (June 23, 1976), that the earlier provisions did not comport with due process. However, upon a later motion by the defendant in these cases to alter or amend the judgment, that Court held that it had examined the revised regulations and found that they comport with due process.

This Court agrees with the conclusions of the Tidwell court. Even if this Court had jurisdiction to determine the issue, it would find that the plaintiffs' substantive claims are without merit, and this action should be dismissed.

THEREFORE, for the reasons stated, good cause therefor appearing, it is

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11. 43 U.S.C. §405(j).
12. 20 C.F.R. §§404.1501-404.1510
13. 20 C.F.R. §§416.607-416.690.

ORDERED that this action be dismissed, and the defendants may go hence without day.

Edwards, Circuit Judge, and Waliski, Judge, concur.

IT IS SO ORDERED.

United States Circuit Judge

United States District Judge

Sr. United States District Judge

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